

Department of Energy

932.7003

Subpart 932.9—Prompt Payment

932.970 Implementing DOE policies and procedures.

(a) *Invoice payments*—(1) *Contract Settlement Date*. For purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods*. Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments*. Contracting officers may specify payment due dates that are less than the standard 30 days when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

[61 FR 41708, Aug. 9, 1996]

Subpart 932.70—DOE Loan Guarantee Authority

932.7002 Authority.

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board only by the Secretary, or designee specified for that purpose, and only when made pursuant to enabling legislation or other authority; e.g., by executive order or regulation.

932.7003 Policies.

The following policies governing the exercise of its loan guarantee authority have been established by DOE:

(a) The use of the loan guarantee authority is not restricted to contracts or subcontracts of any particular type or class. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(b) The fact that a contract has been awarded as a result of competitive bidding should not, of itself, render the loan ineligible for guarantee by DOE if the contractor is financially responsible and its need for working capital is the result of the impact of a defense program or any other DOE program for which guaranteed loans are authorized.

(c) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or DOE to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(d) The criterion that the materials or services to be provided cannot readily be acquired from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices,

932.7004

and time and expense involved in re-issuing the contract, including termination payment, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(e) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate advice and in reaching a decision should consider at least the following:

(1) The savings to be realized by awarding the contract to the low offeror;

(2) The risk to the Government in guaranteeing a loan; and

(3) The likelihood, if award is made to the second low offeror, of that offeror's applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(f) The amount of the loan should bear reasonable relationship to such factors as the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, the frequency with which contract payments are to be made, and the borrower's current working capital position.

(g) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the contract for which the loan is sought. In order that the contractor will also use its own funds in the performance of the contracts, amounts outstanding under the loan or line-of-credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in its contracts, regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of contracts, but does not include any items for which no work has been done nor expenditures made.

(h) Unless there are exceptional circumstances, the loan should mature

48 CFR Ch. 9 (10-1-04 Edition)

not later than 30 days after the estimated date of final payment under the contract.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

932.7004 Procedures.

932.7004-1 Guaranteed loans for civilian programs.

The procedures for authorizing a guaranteed loan under legislation other than section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) shall be essentially the same as those set forth in FAR 32.304, Procedures, FAR 32.305, Loan Guarantees for Terminated Contracts, and FAR 32.306 Loan Guarantee for Subcontracts; except that any contrary provisions required by enabling legislation authorizing the loan shall govern.

932.7004-2 Criteria.

(a) The materials or services to be furnished by the contractor are necessary to the Government interest.

(b) The materials or services cannot as a practical matter be obtained from alternate sources without delay or impeding the Government's interest, except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(c) The contractor has demonstrated its inability to obtain the necessary financing in conventional credit channels without the guarantee.

(d) There is reasonable assurance that the loan can be repaid.

(e) The contractor is competent to perform the contract.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

932.7004-3 Eligibility.

The applicant's eligibility for a guaranteed loan will be based on:

(a) Contracting officer determinations and findings regarding items (a), (b) and (e) in 932.7004-2 as incorporated in a Certificate of Eligibility (FAR 32.304-2); and

(b) The Chief Financial Officer's determination for items (c) and (d) in 932.7004-2 based on information contained in the application, the Federal Reserve Bank's report, and information